

E-filed 4-2-07

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7
8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In Re:
11 USA COMMERCIAL MORTGAGE COMPANY,
12 Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR

12 In Re:
13 USA CAPITAL REALTY ADVISORS, LLC,
14 Debtor.

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

15 In Re:
16 USA CAPITAL DIVERSIFIED TRUST DEED
17 FUND, LLC,
18 Debtor.

**DECLARATION OF SCOTT D.
AUGUST, CFA OF SIERRA
LIQUIDITY FUND, LLC IN
SUPPORT OF SIERRA
LIQUIDITY FUND, LLC'S
RESPONSE TO CLARIFY
TERMS AND CONDITIONS OF
SIERRA LIQUIDITY FUND,
LLC'S BID FOR PLACER
VINEYARDS COMMERCIAL
MORTGAGE ASSETS AND
TERM SHEET**

18 In Re:
19 USA CAPITAL FIRST TRUST DEED FUND, LLC,
20 Debtor.

21 In Re:
22 USA SECURITIES, LLC,
23 Debtor.

24 Affects:
25 ☒ All Debtors
26 ☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed, Fund, LLC

Hearing Date: April 9, 2007
Hearing Time: 1:30 p.m.

27 I Scott D. August, CFA on behalf of Sierra Liquidity Fund, LLC hereby declare as follows:
28

1 1. I am over 18 years of age, and I have personal knowledge of each of the facts stated in this
 2 declaration ("Declaration"), except for those facts stated on information and belief, and as to those facts,
 3 I am informed and believe them to be true. If called as a witness, I could and would testify as to the
 4 matters set forth below based upon my personal knowledge, except where otherwise indicated below.

5 2. I am a Managing Member and Vice President of Sierra Asset Management, LLC, a California
 6 Limited Liability Company which manages the Sierra Liquidity Fund, LLC ("Sierra") a California
 7 Limited Liability Company. I am competent to testify with respect to the matters recited herein.

8 3. I submit this declaration in support of Sierra Liquidity Fund, LLC's Response to Clarify Terms
 9 and Conditions of Sierra Liquidity Fund, LLC's Bid for Placer Vineyards Commercial Mortgage Assets
 10 and Term Sheet, which was filed on April 2nd, 2007 in the above-captioned chapter 11 cases of USA
 11 Commercial Mortgage Company ("USACM"), USA Capital First Trust Deed Fund, LLC ("FTDF"), and
 12 their other affiliated debtors (collectively, the "Debtors").

13
 14 **I. Background and Qualifications of James S. Riley, Managing Director of Sierra Asset**
 15 **Management, LLC**

16 4. Mr. Riley is Managing Director of Sierra Asset Management, LLC which manages the Sierra
 17 Liquidity Fund, LLC a fund which, founded in 2001, has historically invested in distressed trade claims,
 18 and stressed and distressed securities. Sierra Asset Management, LLC performs proprietary analysis in
 19 bankruptcy cases including WorldCom, Adelphia, Mirant, Delphi, as well as many stressed and high
 20 yield credits.

21 5. Mr. Riley served as a member of the Official Committee of Unsecured Creditors for Adelphia
 22 Communications Corporation, the fifth largest cable company in the United States with over \$20 billion
 23 in liabilities at the petition date.

24 6. Since 1982, Mr. Riley has been president of Riley Bower, Inc., a company that developed from
 25 1982 to 1995 over \$240,000,000, consisting of over 2,000 units of apartments, homes, condominiums
 26 and land entitlements on over 14 projects in Northern and Southern California (Exhibit A). This gives
 27 Sierra unique experience in analyzing the ongoing entitlement process for the Placer Vineyard Specific
 28 Plan ("PVSP"), asserting the rights and role of the Direct Lenders (if the notes are not cured and the

1 property is foreclosed) in the PVSP Development Group, and overseeing the marketing and disposition
2 of the property, if required.

3 7. Mr. Riley was educated at Thacher School, UC Berkeley, Humboldt State (BS Physics), and did
4 graduate work in Physics at UC Santa Barbara. Mr. Riley is currently a member of the Board of
5 Directors of the Long Beach Opera and an advisor to the Bikestation Coalition. He is also co-founder
6 of the West Coast Friends of the Greater Yellowstone Coalition.

7
8 **II. Background and Qualifications of E. Frank Bower, Managing Director of Riley Bower, Inc.**

9 8. Mr. Bower co-founded Riley Bower, Inc. and co-managed the development and acquisition of
10 over \$240,000,000 of apartments, homes, industrial properties, and land entitlements. In this capacity,
11 Mr. Bower was responsible for site selection, product design, and management, as well as co-managing
12 construction and disposition.

13 9. As Managing Director of Riley Bower, Inc., Mr. Bower has assembled a portfolio of industrial
14 and multi-family properties in Southern California and Arizona. Mr Bower is responsible for all
15 purchase analysis, proformas, budgeting, maintenance and property selection.

16 10. In addition, Mr. Bower oversees a management team that manages real estate assets in the San
17 Francisco Bay Area, Southern California, and Phoenix, Arizona.

18 11. Mr. Bower obtained his BS degree from the University of Kansas, and is a licensed architect in
19 the state of California.

20
21 **III. Background and Qualifications of R. Vincent Bower, Managing Director of Riley Bower,**
22 **Inc.**

23 12. Managing Director of Riley Bower, Inc., Mr. Bower's primary responsibilities are financial
24 analysis and preparation of proformas for all property acquisitions, as well as budgeting and accounting
25 supervision for the Riley Bower portfolio.

26 13. Mr. Bower has over 25 years of high level financial and accounting responsibility in a wide
27 variety of industries.

1 14. Prior to joining Riley Bower, Mr. Bower was accounting supervisor for multiple ConAgra
2 companies, controlling and maintaining corporate fixed asset records totaling \$500 million at 12 major
3 manufacturing sites in the United States and Canada.

4
5 **IV. Background and Qualifications of Scott D. August, CFA and Managing Director of Sierra**
6 **Asset Management, LLC**

7 15. Mr. August is Managing Member and Vice President of Sierra Asset Management, LLC which
8 manages the Sierra funds and Sierra Liquidity Fund, LLC.

9 16. Mr. August is a financial analyst and trader for Sierra Liquidity Fund, LLC. Mr. August employs
10 public records, SEC filings, and bankruptcy case filings to prepare proprietary analysis utilized for
11 security selection. Mr. August also assists in the asset allocation and portfolio construction for the fund.

12 17. Prior to joining Sierra, Mr. August was employed by Trust Company of the West from 1998 until
13 2003 working in analysis, as well as marketing investment portfolios to High Net Worth and Institutional
14 clients.

15 18. Mr. August was educated at the University of Michigan in Ann Arbor, where he received a
16 Bachelor of Arts in Political Science with an emphasis in Economics. Mr. August is a Chartered
17 Financial Analyst and a member of the CFA Institute and the Los Angeles Society of Financial Analysts.

18
19 **V. Sierra as a potential Successor Servicer to the Placer CMA's will fulfill the Fiduciary Duty**
20 **owed to the Direct Lenders**

21 19. Sierra is an Assignee of Direct Lender interests in certain USACM related loans totaling in
22 excess of \$3 million in principal amount, including almost 3% of the principal amount outstanding on
23 the Placer Vineyards Senior Note. Sierra's interests are aligned with those of the Direct Lenders in
24 preserving the value of the collateral securing the Deeds of Trust and Promissory Notes. Sierra also fully
25 understands the rights the Direct Lenders, the Borrower, and the Servicer maintain under the Promissory
26 Note, Deed of Trust, Loan Agreement and Loan Servicing Agreement.

27 20. Should Sierra win the bidding for the Placer CMA's. and execute a final and acceptable asset
28 purchase agreement with USACM, Sierra will implement the allocation of payments, or "waterfall", as

1 it was intended under the terms of the Promissory Note, Deed of Trust, Loan Agreement and Loan
2 Servicing Agreement, and as further described in Sierra Liquidity Fund, LLC's Response to Clarify
3 Terms and Conditions of Sierra Liquidity Fund, LLC's Bid for Placer Vineyards Commercial Mortgage
4 Assets and Term Sheet; thereby protecting the collateral pledged to the Direct Lenders by the Borrower
5 from any predatory servicer who may interpret that Default Interest and Late Fees are due to a Servicer,
6 senior in priority of payment to the principal and interest owed to the Direct Lenders, even in the event
7 of a foreclosure, and not collected from the Borrower.

8 21. Sierra has reason to believe, that Compass Partners, LLC ("Compass"), the successor servicer
9 to the majority of the loans where USACM was the prior servicer and where such servicing rights were
10 sold to Compass by USACM asserts their right as the servicer to receive default interest and late fees
11 senior in right of priority to Direct Lender principal and interest, even in the event of a foreclosure,
12 where such amounts are not collected from the Borrower, and even if the Direct Lenders elect to waive
13 default interest and late fees -- as further described in Sierra Liquidity Fund, LLC's Response to Clarify
14 Terms and Conditions of Sierra Liquidity Fund, LLC's Bid for Placer Vineyards Commercial Mortgage
15 Assets and Term Sheet. Not only has Compass has failed to reject Sierra's assertion, but Compass has
16 clarified on several occasions to Sierra and the Lender Protection Group that they believe they are correct
17 in their methodology. Sierra has had conversations with each of the following individuals who have
18 verbally confirmed Compass' position regarding Compass' alleged priority of default interest and late
19 fees:

- 20 • Mark Olson - former Chief Operating Officer at USA Commercial Mortgage Company, now
21 employed by Compass Financial Partners
- 22 • James Reed - formerly employed by Mesirow Financial, now employed by Compass
23 Financial Partners
- 24 • Robert Koe - currently employed by Mesirow Financial. To Mr. Koe's credit he stated to
25 Sierra that he believes he was fooled by Compass and is shocked that they are trying to assert a
26 senior right to default interest and late fees.
- 27 • Steve Strong - currently employed by Ray Quinney & Nebeker P.C. counsel to USACM and
28 affiliated Debtors.

1 • Donna Cangelosi - Head of the Lender Protection Group. Ms. Cangelosi and numerous
2 other Direct Lenders have confirmed to Sierra verbally that Compass has related the same
3 position to the Lender Protection Group regarding default interest and late fees.

4 22. If in any way, Sierra has mischaracterized Compass' view of the Servicer's priority right to default
5 interest and late fees senior in right of payment to the principal and interest owed to the Direct Lenders,
6 even in the event of a foreclosure, where such amounts are not collected from the Borrower, then Sierra
7 urges Compass to simply clarify their position to the Direct Lenders and the Court.

8
9 VI. Sierra intends to utilize the services of FCI National Lender Services as sub-servicer.

10 23. Sierra's proposed Subservicer is FCI National Lender Services:

11 <http://www.trustfci.com/index.html>, one of the largest and most qualified private money Servicers in
12 the United States, and a licensed servicer in the state of Nevada.

13
14 Respectfully submitted and Executed this 2nd day of April 2007 at Irvine, California

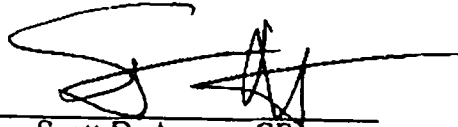
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16 
17 Scott D. August, CFA

EXHIBIT A**RILEY BOWER NEVADA, INC.**

PROJECT NAME	LOCATION	DATE	#	VALUATION
Santa Fe Village I	North Las Vegas	10/94	40	\$4,320,000
Santa Fe Village II	North Las Vegas	3/95	75	\$8,100,000

**RILEY BOWER, INC.
MULTIFAMILY PROJECTS**

In the following projects, Riley Bower, Inc. was the developer, general contractor and general partner. Riley Bower also provided the property management services for all the apartment complexes.

PROJECT NAME	LOCATION	YEAR	#	VALUATION
Elden Mesa	Costa Mesa, CA	1980	13	\$1,560,000
Oak Knoll	Pasadena, CA	1982	9	1,170,000
Three Palms	Pasadena, CA	1983	24	3,120,000
The Groves	Pasadena, CA	1983	58	6,600,000
Parkridge Meadow	Corona, CA	1984	88	4,525,000
Contra Loma	Antioch, CA	1985	128	6,900,000
Highland Orchard	Placentia, CA	1985	104	7,000,000
Crossbrook	Rohnert Park, CA	1986	226	12,500,000
Village Green	Suisun City, CA	1987	224	12,300,000
Arcadian	Concord, CA	1987	192	13,200,000
Rivershore	W. Pittsburg, CA	1988	240	16,500,000
Emeritus Park	Corona, CA	1987	133	5,300,000
Riverview	Santa Ana, CA	1987	240	16,500,000
Gateway	San Leandro, CA	1989	236	15,500,000
Willow Glen	Hercules, CA	1988	84	5,800,000
Civic Plaza	El Cerrito, CA	1989	162	14,000,000
TOTAL			2,166	\$140,475,000

SINGLE FAMILY PROJECTS

Land Developments Projects

In the following projects, Riley Bower, Inc. acquired or optioned the land, obtained all the entitlements through all governmental entities, and in cases provided limited land development before reselling for a profit to Kaufman & Broad (2 projects), Lewis Homes, and others. All values given are for the completed project.

Glen Avon	Glen Avon, CA	1988	105	\$17,000,000
Upland Estates	Upland, CA	1987	101	30,300,000
Parkside	La Habra, CA	1989	48	9,600,000
Ben Nevis	Glen Avon, CA	1989	18	2,800,000
Hesperian	San Lorenzo	1990	73	17,500,000
Huntwood	Hayward, CA	1990	30	7,500,000
Civic Center	Castro Valley	1989	154	14,000,000
TOTAL			529	\$104,700,000

RBI INDUSTRIAL PROPERTIES

The following list of properties have been acquired, managed, re-leased, and resold or held and managed by the company.

			<u>SF</u>	<u>Purchase</u>
Alma School Business Center	Mesa, AZ	1999	54,600	\$2,460,000

Sold 9/2000 for \$3,160,000

Central Business Center, Phoenix, AZ	2000	54,700	\$2,050,000
2805 Barranca, Irvine, CA	1999	15,110	\$1,565,000

Sold for \$1,650,000, November, 1999

Carter Building, S. Laguna, CA	2000	7,650	\$758,000
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Sold for \$995,000, May, 2002

Jorgenson Steel Building, City of Industry, CA	2000	83,629	\$3,675,000
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Sold for \$4,950,000 August 2001

Arizona Corporate Center, Chandler, AZ	2001	65,630	\$4,800,000
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Roosevelt Tech Center, Tempe, AZ	2002	60458	\$5,160,000
Hardy Business Center, Tempe, AZ	2002	49180	\$3,700,000

RILEY BOWER INC.

Current Properties Under Management

Arizona Corporate Center, Chandler, AZ	2001	65630	\$4,800,000
Roosevelt Tech Center, Tempe, AZ	2002	60458	\$5,160,000
Hardy Business Center, Tempe, AZ	2002	49180	\$3,700,000

Total Industrial/ Office: 175,268 sf

Civic Plaza Apartments	El Cerrito, CA	162 units	\$20,250,000
Fountain Plaza Apartments	Vallejo, CA	184 units	\$16,560,000

Total Apartment Properties: 346 units

Grand Total Valuation: \$50,470,000